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16 UNITED STATES DISTRICT COURT
17 CENTRAL DISTRICT OF CALIFORNIA
18 WESTERN DIVISION

19 SUMMIT ENTERTAINMENT, LLC, a
20 Delaware limited liability company,

21 Plaintiff,

22 v.

23 ZAZZLE.COM., INC., a California
24 corporation,

25 Defendant.

26 ZAZZLE.COM., INC., a California
27 corporation,

28 Counterclaimant,

v.

SUMMIT ENTERTAINMENT, LLC, a
Delaware limited liability company,

Counterdefendant.

Case No. CV09-07691 GW (JCx)

**DEFENDANT ZAZZLE.COM'S
ANSWER TO FIRST AMENDED
COMPLAINT AND AMENDED
RELATED COUNTERCLAIMS**

DEMAND FOR JURY TRIAL

CLERK U.S. DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
LOS ANGELES

2010 APR 19 PM 3:19

FILED

By FAX

ANSWER TO FIRST AMENDED COMPLAINT

Defendant ZAZZLE.COM (“Zazzle”), through undersigned counsel, answers the First Amended Complaint for False Designation of Origin, Trademark Infringement, Trademark Dilution, Copyright Infringement, and Unfair Competition (“FAC”) of Plaintiff SUMMITT ENTERTAINMENT, LLC (“Plaintiff”) as follows:

JURISDICTION

7 1. In response to paragraph 1, Zazzle admits that the FAC purports to
8 state a claim for damages and injunctive relief for trademark and copyright
9 infringement, false designation of origin, dilution, and unfair competition but
10 denies that Plaintiffs are entitled to any such relief. Zazzle admits that this Court
11 has original subject matter jurisdiction over this matter. Except as specifically
12 admitted, Zazzle denies the allegations in paragraph 1.

13 2. In response to paragraph 2, Zazzle admits that this Court has personal
14 jurisdiction over Zazzle for purposes of this action. Zazzle lacks sufficient
15 information or knowledge to either admit or deny the allegation that Plaintiff
16 resides in this judicial District, and therefore denies it on that basis. Zazzle denies
17 the remaining allegations of paragraph 2.

PARTIES

19 3. In response to paragraph 3, Zazzle lacks sufficient information or
20 knowledge to either admit or deny the allegations of this paragraph, and therefore
21 denies them on that basis.

22 4. In response to paragraph 4, Zazzle admits that it is a California
23 corporation and has its principal place of business in Redwood City, California.

THE ALLEGED FACTS

Allegations Regarding “Summit’s Business and the *Twilight* Series”

3 5. In response to paragraph 5, Zazzle lacks sufficient information or
4 knowledge to either admit or deny the allegations of this paragraph, and therefore
5 denies them on that basis.

6 6. In response to paragraph 6, Zazzle lacks sufficient information or
7 knowledge to either admit or deny the allegations of this paragraph, and therefore
8 denies them on that basis.

9 7. In response to paragraph 7, Zazzle lacks sufficient information or
10 knowledge to either admit or deny the allegations of this paragraph, and therefore
11 denies them on that basis.

12 8. In response to paragraph 8, Zazzle lacks sufficient information or
13 knowledge to either admit or deny the allegations of this paragraph, and therefore
14 denies them on that basis.

15 9. In response to paragraph 9, Zazzle lacks sufficient information or
16 knowledge to either admit or deny the allegations of this paragraph, and therefore
17 denies them on that basis

18 10. In response to paragraph 10, Zazzle lacks sufficient information or
19 knowledge to either admit or deny the allegations of this paragraph, and therefore
20 denies them on that basis.

Allegations Regarding “Summit’s Trademark and Copyrights”

22 11. In response to paragraph 11, Zazzle lacks sufficient information or
23 knowledge to either admit or deny the allegations of this paragraph, and therefore
24 denies them on that basis

25 12. In response to paragraph 12, Zazzle admits that Exhibit A to the FAC
26 purports to be a copy of a trademark registration. Exhibit A speaks for itself.

1 Zazzle lacks sufficient information or knowledge to either admit or deny the
2 remaining allegations of this paragraph, and therefore denies them on that basis.

3 13. In response to paragraph 13, Zazzle lacks sufficient information or
4 knowledge to either admit or deny the allegations of this paragraph, and therefore
5 denies them on that basis.

6 14. In response to paragraph 14, Zazzle lacks sufficient information or
7 knowledge to either admit or deny the allegations of this paragraph, and therefore
8 denies them on that basis.

9 15. In response to paragraph 15 including subparagraphs 15.a through 15.k,
10 Zazzle lacks sufficient information or knowledge to either admit or deny the
11 allegations of this paragraph and its subparagraphs, and therefore denies them on
12 that basis.

13 16. In response to paragraph 16, Zazzle lacks sufficient information or
14 knowledge to either admit or deny the allegations of this paragraph, and therefore
15 denies them on that basis.

16 17. In response to paragraph 17, Zazzle lacks sufficient information or
17 knowledge to either admit or deny the allegations of this paragraph, and therefore
18 denies them on that basis.

19 18. In response to paragraph 18, Zazzle lacks sufficient information or
20 knowledge to either admit or deny the allegations of this paragraph, and therefore
21 denies them on that basis.

22 19. In response to paragraph 19, Zazzle lacks sufficient information or
23 knowledge to either admit or deny the allegations of this paragraph, and therefore
24 denies them on that basis.

25 a. In response to paragraph 19.a, Zazzle admits that Exhibit B to the FAC
26 purports to be a copy of a copyright registration. Exhibit B speaks for itself. Zazzle
27

1 lacks sufficient information or knowledge to either admit or deny the remaining
2 allegations of this paragraph, and therefore denies them on that basis.

3 b. In response to paragraph 19.b, Zazzle admits that Exhibit C to the FAC
4 purports to be a copy of a copyright registration. Exhibit C speaks for itself. Zazzle
5 lacks sufficient information or knowledge to either admit or deny the remaining
6 allegations of this paragraph, and therefore denies them on that basis.

7 c. In response to paragraph 19.c, Zazzle admits that Exhibit D to the FAC
8 purports to be a copy of a copyright registration. Exhibit D speaks for itself. Zazzle
9 lacks sufficient information or knowledge to either admit or deny the remaining
10 allegations of this paragraph, and therefore denies them on that basis.

11 d. In response to paragraph 19.d, Zazzle admits that Exhibit E to the FAC
12 purports to be a copy of a copyright registration. Exhibit E speaks for itself. Zazzle
13 lacks sufficient information or knowledge to either admit or deny the remaining
14 allegations of this paragraph, and therefore denies them on that basis.

15 e. In response to paragraph 19.e, Zazzle admits that Exhibit F to the FAC
16 purports to be a copy of a copyright registration. Exhibit F speaks for itself. Zazzle
17 lacks sufficient information or knowledge to either admit or deny the remaining
18 allegations of this paragraph, and therefore denies them on that basis.

19 f. In response to paragraph 19.f, Zazzle admits that Exhibit G to the FAC
20 purports to be a copy of a copyright registration. Exhibit G speaks for itself. Zazzle
21 lacks sufficient information or knowledge to either admit or deny the remaining
22 allegations of this paragraph, and therefore denies them on that basis.

23 g. In response to paragraph 19.g, Zazzle admits that Exhibit H to the FAC
24 purports to be a copy of a copyright registration. Exhibit H speaks for itself. Zazzle
25 lacks sufficient information or knowledge to either admit or deny the remaining
26 allegations of this paragraph, and therefore denies them on that basis.

27

h. In response to paragraph 19.h, Zazzle admits that Exhibit I to the FAC purports to be a copy of a copyright registration. Exhibit I speaks for itself. Zazzle lacks sufficient information or knowledge to either admit or deny the remaining allegations of this paragraph, and therefore denies them on that basis.

i. In response to paragraph 19.i, Zazzle admits that Exhibit J to the FAC purports to be a copy of a copyright registration. Exhibit J speaks for itself. Zazzle lacks sufficient information or knowledge to either admit or deny the remaining allegations of this paragraph, and therefore denies them on that basis.

j. In response to paragraph 19.j, Zazzle admits that Exhibit K to the FAC purports to be a copy of a copyright registration. Exhibit K speaks for itself. Zazzle lacks sufficient information or knowledge to either admit or deny the remaining allegations of this paragraph, and therefore denies them on that basis.

k. In response to paragraph 19.k, Zazzle admits that Exhibit L to the FAC purports to be a copy of a copyright registration. Exhibit L speaks for itself. Zazzle lacks sufficient information or knowledge to either admit or deny the remaining allegations of this paragraph, and therefore denies them on that basis.

1. In response to paragraph 19.1, Zazzle admits that Exhibit M to the FAC purports to be a copy of a copyright registration. Exhibit M speaks for itself. Zazzle lacks sufficient information or knowledge to either admit or deny the remaining allegations of this paragraph, and therefore denies them on that basis.

m. In response to paragraph 19.m, Zazzle admits that Exhibit N to the FAC purports to be a copy of a copyright registration. Exhibit N speaks for itself. Zazzle lacks sufficient information or knowledge to either admit or deny the remaining allegations of this paragraph, and therefore denies them on that basis.

n. In response to paragraph 19.n, Zazzle admits that Exhibit O to the FAC purports to be a copy of a copyright registration. Exhibit O speaks for itself. Zazzle

1 lacks sufficient information or knowledge to either admit or deny the remaining
2 allegations of this paragraph, and therefore denies them on that basis.

3 o. In response to paragraph 19.o, Zazzle admits that Exhibit P to the FAC
4 purports to be a copy of a copyright registration. Exhibit P speaks for itself. Zazzle
5 lacks sufficient information or knowledge to either admit or deny the remaining
6 allegations of this paragraph, and therefore denies them on that basis.

7 p. In response to paragraph 19.p, Zazzle admits that Exhibit Q to the FAC
8 purports to be a copy of a copyright registration. Exhibit Q speaks for itself. Zazzle
9 lacks sufficient information or knowledge to either admit or deny the remaining
10 allegations of this paragraph, and therefore denies them on that basis.

11 q. In response to paragraph 19.q, Zazzle admits that Exhibit R to the FAC
12 purports to be a copy of a copyright registration. Exhibit R speaks for itself. Zazzle
13 lacks sufficient information or knowledge to either admit or deny the remaining
14 allegations of this paragraph, and therefore denies them on that basis.

15 r. In response to paragraph 19.r, Zazzle admits that Exhibit S to the FAC
16 purports to be a copy of a copyright registration. Exhibit S speaks for itself. Zazzle
17 lacks sufficient information or knowledge to either admit or deny the remaining
18 allegations of this paragraph, and therefore denies them on that basis.

19 s. In response to paragraph 19.s, Zazzle admits that Exhibit T to the FAC
20 purports to be a copy of a copyright registration. Exhibit T speaks for itself. Zazzle
21 lacks sufficient information or knowledge to either admit or deny the remaining
22 allegations of this paragraph, and therefore denies them on that basis.

23 t. In response to paragraph 19.t, Zazzle admits that Exhibit U to the FAC
24 purports to be a copy of a copyright registration. Exhibit U speaks for itself. Zazzle
25 lacks sufficient information or knowledge to either admit or deny the remaining
26 allegations of this paragraph, and therefore denies them on that basis.

27

1 u. In response to paragraph 19.u, Zazzle admits that Exhibit V to the FAC
 2 purports to be a copy of a copyright registration. Exhibit V speaks for itself. Zazzle
 3 lacks sufficient information or knowledge to either admit or deny the remaining
 4 allegations of this paragraph, and therefore denies them on that basis.

5 v. In response to paragraph 19.v, Zazzle admits that Exhibit W to the FAC
 6 purports to be a copy of a copyright registration. Exhibit W speaks for itself.
 7 Zazzle lacks sufficient information or knowledge to either admit or deny the
 8 remaining allegations of this paragraph, and therefore denies them on that basis.

9 20. In response to paragraph 20, Zazzle lacks sufficient information or
 10 knowledge to either admit or deny the allegations of this paragraph, and therefore
 11 denies them on that basis.

12 21. In response to paragraph 21, Zazzle lacks sufficient information or
 13 knowledge to either admit or deny the allegations of this paragraph, and therefore
 14 denies them on that basis.

15 **Allegations Regarding “Defendant Zazzle and Its Infringing Conduct”**

16 22. In response to paragraph 22, Zazzle admits that it operates a website at
 17 www.zazzle.com that is an on-demand retail platform. Users can buy, sell and
 18 create products. Zazzle admits that users can upload their own content to be printed
 19 on various materials and can sell these products to other consumers. In some
 20 instances, Zazzle prints images of a user’s choosing that such users upload to Zazzle
 21 on merchandise, ships the products, and may display images of exemplar products
 22 on zazzle.com. In some instances, Zazzle reviews potential products before
 23 manufacture and will not print images on merchandise Zazzle believes infringe the
 24 intellectual property rights of others. Except to the extent specifically admitted,
 25 Zazzle denies the allegations of paragraph 22.

26 23. In response to paragraph 23, Zazzle lacks sufficient information or
 27 knowledge to either admit or deny the allegations that Summit licenses the

1 TWILIGHT Marks and uses other intellectual property from the *Twilight* Series to
2 numerous licensees, including for the sale of merchandise, and therefore denies
3 them on that basis. Zazzle denies the remaining allegations of paragraph 19.

4 24. Zazzle denies the allegations of paragraph 24.

5 25. Zazzle denies the allegations of paragraph 25.

6 26. Zazzle denies the allegations of paragraph 26.

7 a. In response to paragraph 26.a, Zazzle admits that the image
8 pictured in Figure 4 of paragraph 26.a was uploaded by a user or users to zazzle.com
9 and that the image appeared in Zazzle's marketplace, but denies that the image
10 appears in Zazzle's marketplace currently or as of the date of Zazzle's answer to the
11 original Complaint. Except as specifically admitted, Zazzle denies the allegations of
12 paragraph 26.a.

13 b. In response to paragraph 26.b, Zazzle admits that the image
14 pictured in Figure 5 of paragraph 26.b was uploaded by a user or users to
15 zazzle.com and that the image appeared in Zazzle's marketplace, but denies that the
16 image appears in Zazzle's marketplace currently or as of the date of Zazzle's answer
17 to the original Complaint. Except as specifically admitted, Zazzle denies the
18 allegations of paragraph 26.b.

19 c. In response to paragraph 26.c, Zazzle admits that the images
20 pictured in Figures 6 and 7 of paragraph 26.c were uploaded by a user or users to
21 zazzle.com and that the images appeared in Zazzle's marketplace, but denies that the
22 images appear in Zazzle's marketplace currently or as of the date of Zazzle's answer
23 to the original Complaint. Except as specifically admitted, Zazzle denies the
24 allegations of paragraph 26.c.

25 d. In response to paragraph 26.d, Zazzle admits that the images
26 pictured in Figures 8, 9 and 10 of paragraph 26.d were uploaded by a user or users
27 to zazzle.com and that the images appeared in Zazzle's marketplace, but denies that

1 the images appear in Zazzle's marketplace currently or as of the date of Zazzle's
 2 answer to the original Complaint. Except as specifically admitted, Zazzle denies the
 3 allegations of paragraph 26.d.

4 e. In response to paragraph 26.e, Zazzle admits that the image
 5 pictured in Figure 11 of paragraph 26.e was uploaded by a user or users to
 6 zazzle.com and that the image appeared in Zazzle's marketplace, but denies that the
 7 image appears in Zazzle's marketplace currently or as of the date of Zazzle's answer
 8 to the original Complaint. Except as specifically admitted, Zazzle denies the
 9 allegations of paragraph 26.e.

10 27. Zazzle denies the allegations of paragraph 27.

11 28. In response to paragraph 28, Zazzle admits that users can tag products
 12 with words of the users' choosing and that such tags may be used by users in the
 13 search function on zazzle.com. Except as specifically admitted, Zazzle denies the
 14 allegations of paragraph 28.

15 29. In response to paragraph 29, Zazzle denies that it has used Summit's
 16 intellectual property rights in the *Twilight* Series to advertise and market zazzle.com
 17 and denies that it has placed ads on unofficial *Twilight* Series fan websites. In
 18 response to any remaining allegations in paragraph 29, Zazzle lacks sufficient
 19 information or knowledge to either admit or deny such allegations, and therefore
 20 denies them on that basis.

21 **Allegations Regarding "Notice to Zazzle of Its Infringing Conduct"**

22 30. In response to paragraph 30, Zazzle admits that it received a letter dated
 23 November 10, 2008 from Summit Entertainment and that Exhibit X to the FAC is a
 24 copy of that letter. Exhibit X speaks for itself. Except as specifically admitted,
 25 Zazzle denies the allegations of paragraph 30.

26 31. In response to paragraph 31, Zazzle admits that it received a letter dated
 27 August 13, 2009 from Summit Entertainment and that Exhibit Y to the FAC is a

1 copy of that letter. Exhibit Y speaks for itself. Except as specifically admitted,
2 Zazzle denies the allegations of paragraph 31.

3 32. Zazzle denies the allegations of paragraph 32.

4 **ANSWER TO FIRST CAUSE OF ACTION**

5 **(False Designation of Origin – 15 U.S.C. § 1125(a))**

6 33. In response to paragraph 33, Zazzle incorporates its responses to
7 paragraphs 1-32 above.

8 34. Zazzle denies the allegations of paragraph 34.

9 35. Zazzle denies the allegations of paragraph 35.

10 36. Zazzle denies the allegations of paragraph 36.

11 37. Zazzle denies the allegations of paragraph 37.

12 38. Zazzle denies the allegations of paragraph 38.

13 39. Zazzle denies the allegations of paragraph 39.

14 40. Zazzle denies the allegations of paragraph 40.

15 **ANSWER TO SECOND CAUSE OF ACTION**

16 **(Trademark Infringement)**

17 41. In response to paragraph 41, Zazzle incorporates its responses to
18 paragraphs 1-40 above.

19 42. In response to paragraph 42, Zazzle lacks sufficient information or
20 knowledge to either admit or deny the allegations regarding Summit's use of the
21 alleged TWILIGHT Marks and therefore denies them on that basis. Zazzle denies
22 the remaining allegations of paragraph 42.

23 43. Zazzle denies the allegations of paragraph 43.

24 44. Zazzle denies the allegations of paragraph 44.

25 45. Zazzle denies the allegations of paragraph 45.

26 46. Zazzle denies the allegations of paragraph 46.

27 47. Zazzle denies the allegations of paragraph 47.

1 48. Zazzle denies the allegations of paragraph 48.

2 **ANSWER TO THIRD CAUSE OF ACTION**

3 **(Dilution—15 U.S.C. § 1125©; Cal. Bus. & Prof. Code § 14330)**

4 49. In response to paragraph 49, Zazzle incorporates its responses to
5 paragraphs 1-48 above.

6 50. In response to paragraph 50, Zazzle lacks sufficient information or
7 knowledge to either admit or deny the allegations regarding Summit's use of the
8 alleged TWILIGHT Marks and therefore denies them on that basis. Zazzle denies
9 the remaining allegations of paragraph 50.

10 51. Zazzle denies the allegations of paragraph 51.

11 52. Zazzle denies the allegations of paragraph 52.

12 53. Zazzle denies the allegations of paragraph 53.

13 54. Zazzle denies the allegations of paragraph 54.

14 55. Zazzle denies the allegations of paragraph 55.

15 56. Zazzle denies the allegations of paragraph 56.

16 **ANSWER TO FOURTH CAUSE OF ACTION**

17 **(Copyright Infringement)**

18 57. In response to paragraph 57, Zazzle incorporates its responses to
19 paragraphs 1-56 above.

20 58. Zazzle denies the allegations of paragraph 58.

21 59. Zazzle denies the allegations of paragraph 59.

22 60. In response to paragraph 60, Zazzle admits that it is aware that the
23 *Twilight* motion picture was theatrically released in the United States. Except as
24 specifically admitted, Zazzle denies the allegations of paragraph 60.

25 61. Zazzle denies the allegations of paragraph 61.

26 62. Zazzle denies the allegations of paragraph 62.

27 63. Zazzle denies the allegations of paragraph 63.

64. Zazzle denies the allegations of paragraph 64.

65. Zazzle denies the allegations of paragraph 65.

ANSWER TO FIFTH COUSE OF ACTION

(Statutory and Common Law Unfair Competition)

66. In response to paragraph 66, Zazzle incorporates its responses to paragraphs 1-65 above.

67. Zazzle denies the allegations of paragraph 67.

68. Zazzle denies the allegations of paragraph 68.

AFFIRMATIVE DEFENSES

ZAZZLE sets forth the following affirmative and other defenses. ZAZZLE does not intend hereby to assume the burden of proof with respect to those matters as to which, pursuant to law, Plaintiff bears the burden.

First Affirmative Defense

(Failure to State a Claim)

Each and every cause of action in the FAC fails to state facts sufficient to state a claim for relief.

Second Affirmative Defense

(No Likelihood of Confusion)

Plaintiff's claims are barred in whole or in part because there is no likelihood of confusion with regard to the alleged trademarks.

Third Affirmative Defense

(Estoppel)

Each and every cause of action in the FAC is barred by the doctrine of estoppel.

Fourth Affirmative Defense

(Acquiescence)

Each and every cause of action in the FAC is barred by the doctrine of acquiescence.

Fifth Affirmative Defense

(Laches)

Each and every cause of action in the FAC is barred by the doctrine of laches.

Sixth Affirmative Defense

(Unclean Hands)

Each and every cause of action in the FAC is barred by the doctrine of unclean hands.

Seventh Affirmative Defense

(Waiver)

Each and every cause of action in the FAC is barred by the doctrine of waiver.

Eighth Affirmative Defense

(Consent)

Each and every cause of action in the FAC is barred by the doctrine of consent.

Ninth Affirmative Defense

(Implied License)

Each and every cause of action in the FAC is barred by the doctrine of implied license.

Tenth Affirmative Defense

(Misuse of Copyright)

Each and every cause of action in the FAC is barred by the doctrine of copyright misuse.

Eleventh Affirmative Defense

(Digital Millennium Copyright Act Safe Harbors)

Plaintiff's claims are barred in whole or in part because Zazzle is protected by one or more of the DMCA Safe Harbors in 17 U.S.C. § 512.

Twelfth Affirmative Defense

(Fair Use)

Plaintiff's claims are barred in whole or in part because the activities of Zazzle that Plaintiff alleges to be infringing constitute "fair use" under the copyright and trademark laws.

Thirteenth Affirmative Defense

(Parody)

Plaintiff's claims are barred in whole or in part because the activities of Zazzle that Plaintiff alleges to be infringing constitute "parody."

Fourteenth Affirmative Defense

(Others at Fault)

Without admitting that Plaintiff has been injured or damaged in any manner or amount whatsoever, the alleged damages, if any, were caused by events that occurred outside the control of Zazzle, and/or were caused by the independent acts of others.

Fifteenth Affirmative Defense

(Failure to Mitigate Damages & Protect Copyrights and/or Trademarks)

Plaintiff's demand must be reduced or offset to the extent Plaintiff has failed to mitigate or avoid the purported harm or damages by failing to take reasonable steps to protect its copyrights and/or trademarks.

AMENDED COUNTERCLAIMS

Zazzle.com, Inc. (“Counterclaimant” or “Zazzle”) avers for its counterclaims against Summit Entertainment, LLC (“Counterdefendant” or “Summit”) herein on

1 personal knowledge as to its own activities and on information and belief as to the
 2 activities of others as follows:

3 1. Zazzle is an online service provider that operates zazzle.com.
 4 Zazzle.com is an on-demand retail platform for consumers and major brands,
 5 offering billions of retail quality, one-of-a-kind products. Users of zazzle.com can
 6 create their own unique products and, in certain instances, users can offer their
 7 products for sale to others.

8 2. In letters dated November 10, 2008 and August 13, 2009, Summit
 9 accused Zazzle of infringing Summit's copyrights and trademarks related to the
 10 motion picture *Twilight* by virtue of user-generated content available on zazzle.com.

11 3. Zazzle takes any accusations of intellectual property infringement very
 12 seriously. Zazzle's business practice is to promptly remove user-generated content
 13 from its websites when given notice by rights holders, consistent with the Digital
 14 Millennium Copyright Act. In fact, Zazzle strives to go above and beyond what is
 15 required by the letter of the law and will continue to do whatever is reasonably
 16 requested in order to assist intellectual property rights holders and licensing entities
 17 in their efforts to prevent third parties from making unauthorized use of content.

18 4. Zazzle's system is designed to make it easy for IP owners and others,
 19 including licensing entities, to raise potential concerns. For example, every product
 20 page has a direct link for IP owners (or anyone else) to report intellectual property
 21 violations.

22 5. Consistent with its IP-protective practices, Zazzle responded to
 23 Summit's accusations by taking down the user-generated material to which Zazzle
 24 understood Summit claimed rights. Zazzle also corresponded with Summit to
 25 ensure that it had identified the materials that Summit found objectionable on
 26 zazzle.com, since Summit personnel had requested that certain materials removed
 27

1 by Zazzle be restored to zazzle.com. Zazzle's effort went well above and beyond
2 that which would be required under the law.

3 6. Despite Zazzle's efforts, Summit filed suit against Zazzle on October
4 22, 2009, for *inter alia*, alleged copyright and trademark infringement.

5 7. There is a real and actual controversy between Zazzle and Summit
6 regarding whether Zazzle has infringed any of Summit's copyrights or trademarks
7 related to the motion picture *Twilight*.

8 8. Zazzle thus seeks a declaration that: (1) Zazzle is not liable for
9 infringing Summit's copyrights; and (2) Zazzle is not liable for infringing Summit's
10 trademarks.

JURISDICTION AND VENUE

12 9. The counterclaims arise under federal law, in particular the Copyright
13 Act, 17 U.S.C. §§ 101 *et seq.*, the Lanham Act, 15 U.S.C. §§ 1051 *et seq.*, and the
14 Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.* This Court has jurisdiction
15 under 17 U.S.C. § 501 and 28 U.S.C. §§ 1331, 1338 and 2201. The Court has
16 personal jurisdiction over the Counterdefendant because, *inter alia*, it has availed
17 itself of the jurisdiction of this Court by filing a lawsuit against Zazzle in this Court.

THE PARTIES

21 11. Counterclaimant Zazzle is a California corporation with its principal
22 place of business in Redwood City, California.

23 12. Counterdefendant Summit is a Delaware limited liability company with
24 its principal place of business in Santa Monica, California.

FIRST CAUSE OF ACTION

(DECLARATION OF COPYRIGHT NONINFRINGEMENT)

13. Zazzle re-alleges and incorporates by reference each and every allegation contained in paragraphs 1-12 as though fully set forth here.

14. On or about October 22, 2009, Counterdefendant filed a lawsuit against Zazzle alleging that Zazzle infringed Counterdefendant's copyrighted works. On or about April 2, 2010, Counterdefendant filed a First Amended Complaint also alleging that Zazzle infringed Counterdefendant's copyrighted works.

15. Zazzle denies that it has infringed the copyrighted works asserted by Counterdefendant.

16. An actual and justiciable controversy exists between Zazzle and Counterdefendant regarding the noninfringement of the copyrighted works asserted by Counterdefendant.

17. Pursuant to the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, Zazzle requests a declaration from the Court that it has not infringed the copyrights asserted by the Counterdefendant.

SECOND CAUSE OF ACTION

(DECLARATION OF TRADEMARK NONINFRINGEMENT)

18. Zazzle re-alleges and incorporates by reference each and every allegation contained in paragraphs 1-17 as though fully set forth here.

19. On or about October 22, 2009, Counterdefendant filed a lawsuit against Zazzle alleging that Zazzle infringed Counterdefendant's trademarks. On or about April 2, 2010, Counterdefendant filed a First Amended Complaint also alleging that Zazzle infringed Counterdefendant's trademarks.

20. Zazzle denies that it has infringed the trademarks asserted by Counterdefendant.

1 21. An actual and justiciable controversy exists between Zazzle and
2 Counterdefendant regarding the noninfringement of the trademarks asserted by
3 Counterdefendant.

4 22. Pursuant to the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*,
5 Zazzle requests a declaration from the Court that it has not infringed the trademarks
6 asserted by the Counterdefendant.

RELIEF REQUESTED

8 (a) A judgment in favor of Zazzle denying Plaintiff all relief requested in
9 its FAC in this action and dismissing Plaintiff's FAC with prejudice;
10 (b) A declaration that Zazzle has not infringed the copyrighted works
11 asserted by Counterdefendants;
12 (c) A declaration that Zazzle has not infringed the trademarks asserted by
13 Counterdefendants;
14 (d) That Zazzle be awarded its costs of suit, including reasonable
15 attorneys' fees, and;
16 (e) That the Court award Zazzle such other and further relief as the Court
17 deems just and proper.

DEMAND FOR JURY TRIAL

In accordance with Fed.R.Civ.P. 38(b), Zazzle demands a trial by jury on all issues so triable.

Dated: April 19, 2010

WILSON SONSINI GOODRICH & ROSATI

By:

Natalie J. Morgan
Attorneys for Defendant and
Counterclaimant ZAZZLE.COM, INC.